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7 Attorneys for Defendants Aetna Life Insurance
Company, Aetna Inc., Coventry Health Care, Inc.,
8 First Health Life & Health Insurance Company,
Mark T. Bertolini, Karen S. Lynch, Natassia Kelly,
9 Billie Jo Glabicki, and Chelsea Jeffers

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12

13 STEPHEN YAGMAN,

14 Plaintiff,

15 v.
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17 NATASSIA KELLY, BILLA JOE
18 GOLDICKY, CHELSEA JEFFERS,
19 MARK T. BERTOLINI, KAREN S.
20 LYNCH (ROHAN), FIRST HEALTH
21 LIFE & HEALTH INSURANCE
22 COMPANY, AETNA, INC., AETNA
LIFE INSURANCE COMPANY,
COVENTRY HEALTH CARE, INC.,
and TEN DEFENDANTS, 1-10,

23 Defendants.
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Case No. 2:17-cv-6022 MWF (PJWx)

**RESPONSE TO COURT'S MINUTE
ORDER OF NOVEMBER 8, 2017**

1 On November 8, 2017, the Court entered an order that, *inter alia*, directed
2 Defendants to “detail the timing and amounts of any payments Plaintiff must make in
3 order to avoid termination of the Part D plan in light of Defendants’ intended
4 disposition of the late May/early June \$126.90 payment” Plaintiff had made.
5 (Dkt. 35.) Defendants’ detailed response is set forth in the Declaration of Melissa
6 Weber, attached as Exhibit A, and Defense Counsel’s November 16, 2017 letter to
7 Plaintiff, attached as Exhibit B.

8 In short, Ms. Weber’s declaration reflects that the aforementioned payment of
9 \$126.90 was returned to Plaintiff via check No. 02681544, dated August 9, 2017. As
10 such, there are no funds on account for Plaintiff, and he currently owes \$42.30 for his
11 November 2017 premium payment, which was due on the first of the month.

12 According to Defendant First Health Life & Health Insurance Company’s
13 records, Plaintiff has not yet cashed the refund check. Accordingly, on November 16,
14 2017, Defendants’ counsel sent the above-referenced letter asking how Plaintiff would
15 like to proceed with respect to the refund check. At the time of this filing, Defendants’
16 counsel had not received a response from Plaintiff.

17 If Plaintiff instructs First Health’s counsel to cancel the refund check and apply
18 the \$126.90 towards Plaintiff’s account, then Plaintiff’s November and December
19 2017 premium payments will be paid, and \$42.30 will be credited towards his January
20 2018 premium payment. (Because premiums for 2018 may change from 2017, the
21 \$42.30 may or may not be sufficient to cover the entire amount of premium due
22 January 1, 2018.) If, however, Plaintiff elects to keep the refund check or asks for it to
23 reissue, his account will remain past due in the amount of \$42.30 as of this date, and
24 additional premium payments will be due on the first day of each month going

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1 forward. Plaintiff's membership in the First Health Part D Value Plus (PDP) plan will
2 be terminated if he does not pay the past due amount by January 31, 2018.

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4 DATED: November 20, 2017

GIBSON, DUNN & CRUTCHER LLP

5 By: /s/ Timothy W. Loose

6 Timothy W. Loose

7 Attorneys for Defendants
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Mark T. Bertolini, Karen S. Lynch, Natassia Kelly,
9 Billie Jo Glabicki, Chelsea Jeffers, and Allen Wise

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
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13 STEPHEN YAGMAN,

14 Plaintiff,

15 v.
16

17 NATASSIA KELLY, BILLA JOE
18 GOLDICKY, CHELSEA JEFFERS,
19 MARK T. BERTOLINI, KAREN S.
20 LYNCH (ROHAN), ALLEN WISE,
21 FIRST HEALTH LIFE & HEALTH
22 INSURANCE COMPANY, AETNA,
23 INC., AETNA LIFE INSURANCE
COMPANY, COVENTRY HEALTH
CARE, INC., and TEN
DEFENDANTS, 1-10,

24 Defendants.
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Case No. 2:17-cv-6022 MWF (PJWx)

**DECLARATION OF MELISSA WEBER
IN RESPONSE TO COURT'S MINUTE
ORDER OF NOVEMBER 8, 2017**

Exhibit A – page 3

DECLARATION OF MELISSA WEBER

I, Melissa Weber, declare as follows:

1. I am employed by First Health Life & Health Insurance Company ("First Health") as a Plan Services Manager. Unless otherwise stated, the following facts are within my personal knowledge and, if called and sworn as a witness, I could and would testify competently to them.

2. As part of my duties and responsibilities, I am familiar with the processes and systems involved with enrolling members in the First Health Part D Value Plus (PDP) plan and administering benefits under that plan. I also am familiar with, and have personally examined, First Health's records of Mr. Yagman's payment history as well as First Health's records of the due dates for Mr. Yagman to make his premium payments under the First Health Part D Value Plus (PDP) plan.

3. First Health's records show that it received the following payments from Mr. Yagman, applicable to the following premium periods:

- a. A payment of \$84.60, via personal money order dated March 18, 2017, covering premiums owed for January and February 2017;
- b. A payment of \$126.90, via personal money order dated May 9, 2017, covering premiums owed for March, April, and May 2017;
- c. A payment of \$126.90, received in early June 2017 via an undated check signed by Karen D. Mattox, which payment was returned to Mr. Yagman via Check #02681544, dated August 9, 2017, as there was a dispute as to whether he was a member of the plan at the time.

4. Accordingly, First Health received premium payments from Mr. Yagman covering January through May 2017; any funds that might have been available to credit towards future premium payments were returned to Mr. Yagman via Check #02681544, dated August 9, 2017. Because First Health waived Mr. Yagman's

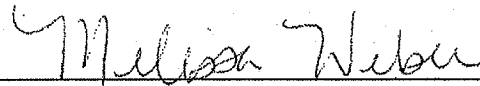
1 premiums owed from June through October 2017, Mr. Yagman is therefore responsible
2 for, and owes, monthly premium payments of \$42.30 beginning on November 1, 2017.

3 5. At the time of this declaration, First Health's records show that
4 Mr. Yagman's November 1, 2017 premium of \$42.30 is still outstanding.

5 6. Mr. Yagman will also have another \$42.30 monthly premium payment
6 coming due on December 1, 2017. Should Mr. Yagman elect to re-enroll in the First
7 Health Part D Value Plus (PDP) plan for calendar year 2018, the following monthly
8 premium will be due January 1, 2018, at the then-prevailing rate, which may differ
9 from the rate charged in 2017. The specific amount of monthly premium due on the
10 first of each month in 2018 will be provided to Mr. Yagman in his enrollment
11 materials should he elect to re-enroll in the plan.

12 I declare under penalty of perjury under the laws of the United States that the
13 foregoing is true and correct.

14 Executed on this 20th day of November, 2017, in Moon Township, PA.

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17 Melissa Weber
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Exhibit A – page 5

DECLARATION OF MELISSA WEBER

GIBSON DUNN

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TLoose@gibsondunn.com

November 16, 2017

VIA OVERNIGHT MAIL

Stephen Yagman
475 Washington Boulevard
Venice Beach, California 90292-5287

Re: Yagman v. Kelley, et al.

Dear Mr. Yagman:

I write further to my letter of November 6, 2017, and in response to your November 7 letter.


In your letter, you state that First Health continues to owe you the \$126.90 payment that was submitted on your behalf via undated check no. 664, signed by Karen D. Mattox. However, First Health refunded \$126.90 to you via check no. 02681544, dated August 9, 2017.

First Health's records reflect that this check has not yet been cashed. If, in fact, you have not received the check mailed to you over three months ago, please let us know how you would like to proceed. One option is for First Health to void the August refund check and apply the \$126.90 as a credit to your premium payments. A second option is to provide you with a replacement check. If you would like a replacement check sent, please confirm the address to which it should be delivered. If you elect to receive a replacement check, your \$42.30 November premium payment, which is past due, will remain outstanding.

If we do not hear further from you, we will assume that you received the August refund check and First Health will not stop payment on the check so that you can cash it at your convenience. However you choose to proceed, remember that you currently owe \$42.30 for your November 2017 premium payment and must take steps to bring your account current.

Please promptly advise of how you would like to proceed.

Regards,



Timothy W. Loose

Exhibit B – page 6

CERTIFICATE OF SERVICE

I, Iris Newman, declare as follows:

I am employed in the County of Los Angeles, State of California, I am over the age of eighteen years and am not a party to this action; my business address is 333 South Grand Avenue, Los Angeles, CA 90071-3197, in said County and State. On November 17, 2017, I served the foregoing document:

RESPONSE TO COURT'S ORDER OF NOVEMBER 8, 2017

on the parties stated below, by the following means of service:

Stephen Yagman
475 Washington Boulevard
Venice Beach, California 90292-5287

- ☒ **BY UNITED STATES MAIL:** I placed a true copy in a sealed envelope or package addressed to the persons as indicated above, on the above-mentioned date, and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited with the U.S. Postal Service in the ordinary course of business in a sealed envelope with postage fully prepaid. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing set forth in this declaration.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Los Angeles, California.

- ☒ I am employed in the office of Timothy W. Loose, a member of the bar of this court, and that the foregoing document(s) was(were) printed on recycled paper.
- ☒ **(FEDERAL)** I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 17, 2017.

Iris Newman